

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 06-0092**  
**RESPONSIBLE OFFICER**  
**WITHHOLDING AND SALES TAX**  
**For Tax Period March 2005-December 2005**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning specific issues.

**Issue**

**I. Withholding and Sales Tax -Responsible Officer Liability**

**Authority:** IC § 6-2.5-9-3; IC § 6-3-4-8(g); IC § 6-8.1-5-1(b).

The taxpayer protests the assessment of corporate withholding and sales taxes against her as a responsible officer.

**Statement of Facts**

The taxpayer was an officer of a corporation that did not remit sales and withholding taxes to Indiana for the tax period March 2005 through December 2005. The Indiana Department of Revenue assessed the outstanding corporate withholding taxes, sales taxes, and penalty against the taxpayer personally. The taxpayer protested the assessment and a hearing was scheduled. The taxpayer failed to appear. This Letter of Findings is based upon the documentation in the file.

**I. Withholding and Sales Tax -Responsible Officer Liability**

**Discussion**

The proposed sales tax liability was issued under authority of IC § 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and

(2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The proposed withholding taxes were assessed against the taxpayer pursuant to IC § 6-3-4-8(g), which provides that, “In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest.”

Indiana Department of Revenue assessments are prima facie evidence that the tax assessment is correct. The taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(b).

The taxpayer did not dispute that she was a party responsible for remittance of corporate sales and withholding trust taxes to the state. She argued that there was no corporate liability for withholding or sales taxes. The taxpayer argued that the corporation ceased operations on February 28, 2005. Since the corporation did not collect any withholding or sales trust taxes after February 28, 2005, it had no obligation to remit trust taxes to the state for tax periods after that date. The taxpayer did not provide adequate documentation to substantiate her contention that the corporation ceased operations on February 28, 2005. Therefore, the department properly assessed the sales and withholding trust taxes for March 2005 through December 2005 against the taxpayer.

### **Finding**

The taxpayer’s protest is denied.

KMA/JMM/DK/06/30/03